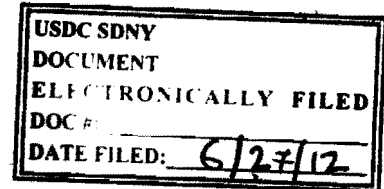


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
BRYAN SMITH,

Plaintiff,

-v-

SAKI RESTAURANT CORP. and ISAMI NAGAI,

Defendants.
-----X

10 Civ. 8237 (PAE) (JCF)

ORDER ADOPTING
REPORT &
RECOMMENDATION

PAUL A. ENGELMAYER, District Judge:

On August 3, 2011, the Hon. James Francis, United States Magistrate Judge, issued a Report and Recommendation to this Court, recommending that a default be entered against defendant Isami Nagai as a sanction for repeated violation of discovery orders. By Order dated January 25, 2012, this Court adopted Judge Francis's Report and Recommendation, and held Nagai in default. Dkt. 26. By Order dated February 8, 2012, the Court granted plaintiff's application to dismiss defendant Saki Restaurant from this action, and referred this case to Judge Francis for an inquest on damages owed by the defaulting defendant, Nagai. Dkt. 27–28. On March 23, 2012, a damages hearing was held before Judge Francis.

On May 15, 2012, Judge Francis issued another Report and Recommendation that plaintiff receive an award of \$47,148.24 in unpaid overtime and liquidated damages, plus \$3,729.83 in prejudgment interest as of May 11, 2012 (increasing at a rate of \$1.69 per day until entry of final judgment), plus \$38,192.50 for retaliation-related damages. Dkt. 35 at 9–10. Judge Francis also recommended that the Court award attorney's fees in an amount of \$59,171 and costs in the amount of \$2,669.74. Dkt. 35 at 15.

A. Applicable Legal Standard

In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). When specific objections are made, “[t]he district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to.” Fed. R. Civ. P. 72(b)(3); *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997). To accept those portions of the report to which no timely objection has been made, “a district court need only satisfy itself that there is no clear error on the face of the record.” *King v. Greiner*, No. 02 Civ. 5810, 2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009) (citation omitted); *see also Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

Neither plaintiff Smith nor defendant Nagai has lodged any objection to Judge Francis's Report and Recommendation calculating the amount of the judgment to be entered.

B. Discussion

A review of the Report and Recommendation reveals no facial error in its conclusions. There is one minor arithmetical discrepancy in the Report and Recommendation, by which the total judgment amount recommended neglects to include interest for the period of a few days before the Report was issued. That negligible miscalculation, however, has been overtaken by events, as the total award of prejudgment interest must be recalculated in any event before judgment may be entered. Accordingly, the Court finds no material error in the Report and Recommendation, and it is adopted in its entirety.


Defendant Nagai's failure to object in a timely manner to the Magistrate Judge's report and recommendation operates as a waiver of appellate review. *See DeLeon v. Strack*, 234 F.3d 84, 86 (2d Cir. 2000) (citing *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989)).

CONCLUSION

The Report and Recommendation is adopted in its entirety. The Clerk of Court is directed to terminate the motion at docket number 32. The Clerk of Court is further directed to enter judgment against defendant Isami Nagai in the amount of:

1. \$47,148.24 in unpaid overtime wages and liquidated damages;
2. \$38,192.50 in retaliation damages;
3. \$59,171 in attorney's fees;
4. \$2,669.74 in costs; and
5. Prejudgment interest calculated at a rate of \$1.69 per day from April 30, 2006 until the date judgment is entered.

SO ORDERED.


Paul A. Engelmayer
United States District Judge

Dated: June 26, 2012
New York, New York